

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PHILIP JOSEPH FRANKLIN,)
)
Defendant.)

INDICTMENT

(18 U.S.C. § 2)
(18 U.S.C. § 371)
(18 U.S.C. § 1001)
(18 U.S.C. § 1027)
(18 U.S.C. § 1341)
(18 U.S.C. § 1957)

~~CR 10-128 DWF/SRN~~
CR 10-128 DWF/SRN

THE UNITED STATES GRAND JURY CHARGES THAT:

AT ALL TIMES RELEVANT TO THIS INDICTMENT:

1. From in or about January 2004 through in or about August 2007, the defendant, PHILIP JOSEPH FRANKLIN, defrauded his employees and his employees' pension and benefit funds out of more than \$500,000 in overtime pay and retirement, health and other benefit contributions. PHILIP JOSEPH FRANKLIN through his company Franklin Drywall, Inc., obtained lucrative government contracts for work on several federally-funded construction projects. Under these contracts, PHILIP JOSEPH FRANKLIN agreed, and was required, to pay his employees a "prevailing wage," which included overtime pay and fringe benefits. Payments to contractors and subcontractors on these contracts are often higher than other commercial construction projects, in part because the payments are calculated and intended to cover prevailing wages, including fringe benefits, of the employees. In addition, payments on these contracts are typically more secure than other commercial construction projects, as they are funded by governmental entities.

SCANNED

AUG 12 2010

U.S. DISTRICT COURT ST. PAUL

(i)

MAY 11 2010

FILED
RICHARD D. SLETTER, CLERK
JUDGMENT ENTERED
DEPUTY CLERK'S INITIALS

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As part of the contracts, PHILIP JOSEPH FRANKLIN also agreed, and was required, to pay overtime pay and retirement and other benefits under the terms of union collective bargaining agreements. In order to evade overtime and benefit contribution payments, and to keep the money for himself, PHILIP JOSEPH FRANKLIN devised a scheme to defraud his employees, his employees' pension and benefit funds, and several governmental agencies by falsifying timesheets and other payroll information and submitting this falsified information to the pension and benefit funds and the government agencies which administered the federally-funded construction projects.

2. Defendant PHILIP JOSEPH FRANKLIN was the president, CEO and 100 percent owner of Franklin Drywall, Inc. ("Franklin Drywall"), a union commercial drywall contracting business that had its main office in the City of Little Canada, in the State and District of Minnesota. PHILIP JOSEPH FRANKLIN oversaw the day-to-day operations of Franklin Drywall. Franklin Drywall was engaged in interstate commerce and in activities affecting interstate commerce.

3. Master Drywall, Inc. ("Master Drywall") was a non-union drywall contracting business with its business operations located in the same office as Franklin Drywall. The named owner of Master Drywall was the wife of PHILIP JOSEPH FRANKLIN, J.F., although she did no real work for the company. Master Drywall maintained

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separate accounting books and a separate bank account from Franklin Drywall, but had no employees or real business operations. Instead, Master Drywall was a shell company used by PHILIP JOSEPH FRANKLIN through which to pay employees of Franklin Drywall in order to avoid paying overtime, pension contributions and other employee benefits. Master Drywall ceased operations in December 2005.

4. While conducting business in the state of Minnesota, Franklin Drywall was bound to the terms of two Collective Bargaining Agreements ("CBAs"): the Lakes and Plains Regional Council of Carpenters and Joiners CBA (the "Carpenters' CBA") and the Painters and Allied Trades District Council No. 82 of Minnesota and International Union of Painters and Allied Trades CBA (the "Painters' and Drywall CBA"). The Carpenters' CBA governs the remittance of fringe benefit contributions to the Carpenters Pension and Benefit Funds ("Carpenters' Funds"). The Painters' and Drywall CBA governs the remittance of fringe benefit contributions to the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds ("DC 82 Funds"). Included in the Carpenters' Funds and the DC 82 Funds (collectively the "Pension and Benefit Funds") are 12 employee benefit funds, each of which was subject to the provisions of Title I of the Employee Retirement Income Security Act of 1974.

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5. The CBAs required Franklin Drywall to pay into the applicable Pension and Benefit Fund a specified amount for each hour worked by any employee, starting with the employee's first day of employment, in a job classification covered by the CBA. For example, as of 2005, for each hour worked by employees with the job classification "Journeyman Taper," Franklin Drywall was required to pay \$14.52 per hour into the DC 82 Funds. Employees of Franklin Drywall were eligible to receive benefits from the Pension and Benefit Funds if they retired, became disabled or terminated their employment; in addition, the next of kin of employees were eligible to receive benefits upon the death of the employee.

6. Franklin Drywall was required to file monthly "Remittance Reports" with each of the Pension and Benefit Funds for each separate job classification. Franklin Drywall was required to list on the Remittance Report the number of hours worked by each employee covered by the particular CBA. In addition, Franklin Drywall was required to pay into the Pension and Benefit Funds an amount that represented the fringe benefits due to the fund under the CBA based on the classification of that employee. For example, Franklin Drywall had to submit to the DC 82 fund (a) a monthly Remittance Report for each "Journeyman Taper" which listed the total number of hours worked by each Franklin Drywall employee working in that job classification and (b) payment of a specified

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dollar amount (\$14.52 per hour in 2005) for each hour worked into the fund for employee benefits such as retirement and health insurance.

FALSE INFORMATION TO THE PENSION AND BENEFIT FUNDS

7. In order to evade payments into the Pension and Benefit Funds, PHILIP JOSEPH FRANKLIN directed administrative/payroll employees of Franklin Drywall to falsify time sheets and submit false information on Remittance Reports which materially under-reported the hours worked by its employees subject to the CBAs. Specifically, PHILIP JOSEPH FRANKLIN routinely directed Franklin Drywall administrative/payroll employees to report on the Remittance Reports no more than 40 hours of work per week for Franklin Drywall employees subject to the CBAs, regardless of the number of hours actually worked by the employee. To evade reporting and paying fringe benefits for the number of hours actually worked, PHILIP JOSEPH FRANKLIN directed that employees who worked more than 40 hours: (a) would be paid for hours worked in excess of 40 hours on a separate paycheck paid on the bank account of Master Drywall at the straight hourly rate, rather than the overtime rate; or (b) would be paid for hours worked in excess of 40 hours on paychecks as "other pay" at the straight hourly rate, rather than the overtime rate.

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8. As a result of this scheme, from in or about January 2004 through in or about August 2007, PHILIP JOSEPH FRANKLIN evaded payment of more than \$500,000 owed to Franklin Drywall employees and the Pension and Benefit Funds. PHILIP JOSEPH FRANKLIN diverted these funds for his own personal use. During the same time period, from January 2004 through in or about August 2007, the defendant paid his and his wife's personal salary from the Franklin Drywall bank account, as well as a number of luxury expenses, including payments for expensive cars, jewelry, vacation trips, personal credit card bills, and part of a down payment on a \$675,000 house in Las Vegas, Nevada.

9. The Pension and Benefit Funds were required to file Annual Reports with the Secretary of Labor using Department of Labor Forms 5500. Title I of the Employee Retirement Income Security Act of 1974 requires the publication of a Form 5500 annually to the Pension and Benefit Funds' participants. The information contained in the Remittance Reports which Franklin Drywall submitted to the Pension and Benefit Funds was used to generate Annual Reports for each of the Pension and Benefit Funds required by law to file them. Because the information provided by Franklin Drywall on the Remittance Reports was false, the Pension and Benefit Funds' Annual Reports contained false information.

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FALSE INFORMATION TO GOVERNMENTAL AGENCIES

10. Franklin Drywall performed work on construction projects funded by various governmental agencies, typically as a subcontractor. In order to obtain these contracts, Franklin Drywall agreed, and was required, to pay its employees who worked on these jobs "prevailing wages," pursuant to federal statutes and Minnesota state statutes. "Prevailing Wage" is a defined term in these statutes, which includes an hourly rate, an overtime rate and payment of fringe benefits. Payments to contractors and subcontractors on prevailing wage contracts are often higher than other commercial construction projects, in part because the payments are calculated and intended to cover prevailing wages, including fringe benefits, of the employees. Defendant PHILIP JOSEPH FRANKLIN agreed to make prevailing wage fringe benefit payments for Franklin Drywall employees by making employer contributions to the Pension and Benefit Funds.

11. On all prevailing wage jobs, Franklin Drywall was required to submit to the general contractor overseeing the construction project a weekly "Certified Payroll Register" listing the employees who worked on the project, as well as their job classification, the total hours they worked, the amount of fringe benefits they were paid and their net pay. Franklin Drywall was also required to submit a signed "Statement of Compliance" with

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each Certified Payroll Register stating that the Certified Payroll Register was correct and complete and that fringe benefits had been paid for each hour actually worked by each employee. The information provided by Franklin Drywall in each Certified Payroll Register was incorporated into reports submitted on a monthly basis by the general contractor to the governmental agency administering payments on the project.

12. Under the contracts which PHILIP JOSEPH FRANKLIN entered into on these federally-funded projects, Franklin Drywall was subject to federal regulations providing that if the governmental agency finds that an employee is being paid less than the prevailing wage, the agency may terminate the contract, or withhold payment from the contractor to make up the difference between what the employee was paid and what he was required to be paid.

13. From in or about January 2005 through in or about August 2007, PHILIP JOSEPH FRANKLIN submitted or caused to be submitted fraudulent or falsified Certified Payroll Registers on at least four federally funded projects: (a) Job #5008 Walker on Lyndale (dates of work January 24, 2005 - August 14, 2005); (b) Job #5021 Heritage Park Townhomes (dates of work August 8, 2005 - December 25, 2005); (c) Job #5026 Payne Avenue Townhomes Phase II (dates of work January 30, 2006 - August 6, 2006); and (d) Job #6001 The Jourdain (dates of work May 8, 2006 - October 29, 2006).

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Specifically, PHILIP JOSEPH FRANKLIN directed administrative/payroll employees of Franklin Drywall to submit Certified Payroll Registers in connection with these projects which under-reported hours worked by Franklin Drywall employees and falsely certified that Franklin Drywall had paid all fringe benefits due and owing to the Pension and Benefit Funds.

COUNTS 1 - 8
(Mail Fraud)
18 U.S.C. § 1341

14. The grand jury re-alleges paragraphs 1 through 13 of this Indictment as though those paragraphs were set forth in full at this point.

15. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, in furtherance and attempted furtherance of a scheme to defraud his employees out of overtime pay and benefit contributions, to defraud the Pension and Benefit Funds out of retirement and other benefits to which they were entitled, and to defraud government agencies with which the defendant entered into contracts containing prevailing wage provisions, as described above in paragraphs 1 through 13, by causing those agencies to believe, falsely, that prevailing wages were being paid when they were not, thereby inducing those agencies

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to continue making contract payments to the defendant's company,
the defendant,

PHILIP JOSEPH FRANKLIN,

being aided and abetted by others known and unknown to the grand jury, did knowingly cause to be sent, delivered, and moved by the United States Postal Service and interstate commercial carrier various mailings, items and things, that originated from the State of Minnesota, as described below:

COUNT	MAILING
1	Certified Payroll Register for Walker on Lyndale (Job #5008) from Franklin Drywall to the Watson-Forsberg Company, mailed on or about June 23, 2005
2	Certified Payroll Register for Heritage Park Townhomes (Job #5021) from Franklin Drywall to Kraus-Anderson Construction, mailed on or about December 28, 2005
3	Certified Payroll Register for Payne Avenue Townhomes (Job #5026) from Franklin Drywall to Shaw Lundquist Associates, Inc., mailed on or about June 19, 2006
4	Certified Payroll Register for the Jourdain (Job #6001) from Franklin Drywall to the Watson-Forsberg Company, mailed on or about September 20, 2006
5	Remittance Report to the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds, mailed on or about August 3, 2006
6	Remittance Report to the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds, mailed on or about September 4, 2006

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COUNT	MAILING
7	Remittance Report to the Carpenters Pension and Benefit Funds, mailed on or about July 18, 2005
8	Remittance Report to the Carpenters Pension and Benefit Funds, mailed on or about September 16, 2005

All in violation of Title 18, United States Code, Sections 2 and 1341

COUNT 9

(Conspiracy to Commit Offenses Against the United States)
18 U.S.C. § 371

16. The grand jury re-alleges paragraphs 1 through 15 of this Indictment as though those paragraphs were set forth in full at this point.

17. From in or about January 2004 through in or about August 2007, the defendant,

PHILIP JOSEPH FRANKLIN,

and others known and unknown to the grand jury, within the State and District of Minnesota, unlawfully combined, conspired, confederated and agreed to commit the following offenses against the United States:

a. Mail fraud as set forth in Counts 1 through 8 above, in violation of Title 18, United States Code, Section 1341;

b. In order to conceal the existence of this conspiracy, and of the individual acts of mail fraud set forth in Counts 1 through 8, knowingly and unlawfully causing false statements of fact to be made in documents submitted for publications required by the Employee Retirement Income Security Act of 1974, in violation of Title 18, United States Code, Section 1027; and

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c. In order to conceal the existence of this conspiracy, and of the individual acts of mail fraud set forth in Counts 1 through 8, knowingly and unlawfully causing false statements of fact to be made in documents submitted to governmental agencies, in violation of Title 18, United States Code, Section 1001.

OBJECT OF THE CONSPIRACY

18. It was the object of the conspiracy that the conspirators would unjustifiably enrich themselves, (a) by receiving contract payments from government agencies that the government agencies would not have made had the government agency in question known that prevailing wages would not be paid, (b) by retaining for themselves money that should have been paid to the Pension and Benefit Funds, and (c) concealing from the Pension and Benefit Funds that Franklin Drywall owed additional pension and benefit payments and that the Pension and Benefit Funds had a right to collect these payments. The objectives of the conspiracy were accomplished by causing false statements of fact to be made in documents required to be published by the Employee Retirement Income Security Act of 1974; by falsifying timesheets and other payroll records to under-report hours worked by union employees; by misappropriating funds owed to the Pension and Benefit Funds; by misappropriating funds owed to Franklin Drywall employees; by entering into federally-funded construction contracts and agreeing in those contracts to forward to the Pension and Benefit Funds as fringe benefits a portion of the money received from the government

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agency to pay employee wages, but then not forwarding the money; and by causing false certifications to be made to government agencies with which the defendant had contracted that the prevailing wage laws were being followed when they were not.

OVERT ACTS

19. In furtherance of the conspiracy, and in order to accomplish its unlawful objectives, the conspirators committed or caused to be committed the overt acts alleged in paragraphs 7 through 9 and 13 of this Indictment, which are hereby re-alleged and incorporated herein; additional overt acts include, but are not limited to, the mailings charged in Counts 1 - 8, as well as the following specific mailings that originated from the State of Minnesota:

- a. On or about July 15, 2005, a false and misleading Certified Payroll Register related to a federally funded construction project, Walker on Lyndale (Job #5008), was deposited into the United States Mail for delivery to the general contractor on the project, the Watson-Forsberg Company, in Minneapolis, Minnesota.
- b. On or about July 17, 2005, a false and misleading Remittance Report was deposited into the United States Mail for delivery to the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds.
- c. On or about September 29, 2005, a false and misleading Certified Payroll Register related to a federally funded construction project, Heritage Park Townhomes (Job #5021), was deposited into the United States Mail for delivery to the general contractor on the project, Kraus-Anderson Construction, in Minneapolis, Minnesota.

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- d. On or about September 17, 2005, a false and misleading Remittance Report was deposited into the United States Mail for delivery to the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds.
- e. On or about August 1, 2006, a false and misleading Certified Payroll Register related to a federally funded construction project, Payne Avenue Townhomes (Job #5026) was deposited into the United States Mail for delivery to the general contractor on the project, Shaw-Lundquist Associates, Inc., in St. Paul, Minnesota.
- f. On or about September 12, 2006, a false and misleading Remittance Report was deposited into the United States Mail for delivery to the Carpenters Pension and Benefit Funds.
- g. On or about August 24, 2006, a false and misleading Certified Payroll Register related to a federally funded construction project, the Jourdain (Job #6001) was deposited into the United States Mail for delivery to the general contractor on the project, the Watson-Forsberg Company, in Minneapolis, Minnesota.
- h. On or about September 25, 2006, a false and misleading Remittance Report was deposited into the United States Mail for delivery to the Carpenters Pension and Benefit Funds.

All in violation of Title 18, United States Code, Section 371.

COUNT 10

(False Statement to a Government Official)

18 U.S.C. § 1001

20. The grand jury re-alleges paragraphs 1 through 13 and 19 of this Indictment as though those paragraphs were set forth in full at this point.

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21. On or about July 15, 2005, within the State and District of Minnesota, the defendant,

PHILIP JOSEPH FRANKLIN,

being aided and abetted by others known and unknown to the grand jury, in a matter within the jurisdiction of the Executive Branch, namely, United States Department of Labor, did knowingly and willfully make and cause to be made materially false, fictitious and fraudulent statements and representations, by falsely reporting in a Statement of Compliance regarding Job #5008, relating to the Walker on Lyndale project, the total hours worked by Franklin Drywall employees, and that all required funds had been paid into the Pension and Benefit Funds, for the applicable period as required by government contract and applicable collective bargaining agreements.

In violation of Title 18, United States Code, Sections 2 and 1001.

COUNT 11

(False Statement to a Government Official)
18 U.S.C. § 1001

22. The grand jury re-alleges paragraphs 1 through 13 and 19 of this Indictment as though those paragraphs were set forth in full at this point.

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23. On or about August 24, 2006, within the State and District of Minnesota, the defendant,

PHILIP JOSEPH FRANKLIN,

being aided and abetted by others known and unknown to the grand jury, in a matter within the jurisdiction of the Executive Branch, namely, United States Department of Labor, did knowingly and willfully make and cause to be made materially false, fictitious and fraudulent statements and representations, by falsely reporting in a Statement of Compliance, regarding Job #6001, relating to the Jourdain project, the total hours worked by Franklin Drywall employees, and that all required funds had been paid into the Pension and Benefit Funds, for the applicable period as required by government contract and applicable collective bargaining agreements.

In violation of Title 18, United States Code, Sections 2 and 1001.

COUNT 12

(False Statement in Relation to a Document Required by ERISA)
18 U.S.C. § 1027

24. The grand jury re-alleges paragraphs 1 through 13 of this Indictment as though those paragraphs were set forth in full at this point.

25. On or about November 17, 2005, within the State and District of Minnesota, in documents required by the Employee

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Retirement Security Act of 1974 ("ERISA"), to be kept as part of records of the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds, the defendant,

PHILIP JOSEPH FRANKLIN,

being aided and abetted by others known and unknown to the grand jury, did make and cause to be made false statements and representations of fact, knowing them to be false, and did knowingly conceal, cover up and fail to disclose, and cause to be concealed, covered up and not disclosed, facts which were necessary to verify, explain, clarify and check for accuracy and completeness the 2005 Form 5500 Annual Reports of the Painters and Allied Trades District Council No. 82 Pension and Benefit Funds, reports required by ERISA to be published, by submitting Remittance Reports which falsely reported the number of hours worked by Franklin Drywall employees and falsely reported the amount of contributions that Franklin Drywall owed to the fund.

All in violation of Title 18, United States Code, Sections 2 and 1027.

COUNT 13

(False Statement in Relation to a Document Required by ERISA)
18 U.S.C. § 1027

26. The grand jury re-alleges paragraphs 1 through 18 of this Indictment as though those paragraphs were set forth in full at this point.

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27. On or about September 25, 2006, within the State and District of Minnesota, the defendant, in documents required by the Employee Retirement Security Act of 1974 ("ERISA"), to be kept as part of records of the Carpenters Pension and Benefit Funds, the defendant,

PHILIP JOSEPH FRANKLIN,

being aided and abetted by others known and unknown to the grand jury, did make and cause to be made false statements and representations of fact, knowing them to be false, and did knowingly conceal, cover up and fail to disclose, and cause to be concealed, covered up and not disclosed, facts which were necessary to verify, explain, clarify and check for accuracy and completeness the 2005 Form 5500 Annual Reports of the Carpenters Pension and Benefit Funds, reports required by ERISA to be published, by submitting Remittance Reports which falsely reported the number of hours worked by Franklin Drywall employees and falsely reported the amount of contributions that Franklin Drywall owed to the fund.

All in violation of Title 18, United States Code, Sections 2 and 1027.

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COUNT 14
(Illegal Monetary Transactions)
18 U.S.C. § 1957

28. On or about July 27, 2007, in the State and District of Minnesota, the defendant,

PHILIP JOSEPH FRANKLIN,

did knowingly engage in a monetary transaction by, through, and to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000.00, that is, by causing a wire transfer in the amount of \$150,554.97, derived from the proceeds of the mail fraud scheme charged in Counts 2 - 9, out of the bank account of PHILIP JOSEPH FRANKLIN and his wife, J.F., (US Bank account number XXXXXXXX7895) to Title Agency of Nevada, which was used as a down payment for the purchase of a residence in the name of PHILIP JOSEPH FRANKLIN and his wife, J.F., at XXX Angels Trace Court, Las Vegas, Nevada.

All in violation of Title 18, United States Code, Sections 2 and 1957.

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FORFEITURE ALLEGATIONS

Counts 1 through 9 and 14 of this Indictment are hereby realleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(1), and Title 28, United States Code, Section 2461(c).

As the result of the offenses alleged in Counts 1 through 9 of this Indictment, the defendant shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Sections 371 and 1341.

As a result of the offense alleged in Count 14 of the Indictment, the defendant shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(1), all property, real or personal, involved in said money laundering violation and all property traceable to such property, including the real property located at 212 Angels Trace Court, Las Vegas, Nevada.

If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21,

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United States Code, Section 853(p), as incorporated by Title 18,
United States Code, Section 982(b)(1) and by Title 28, United
States Code, Section 2461(c).

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON